

SOUTH AFRICA / JUDGMENT

R.H.K v D.L.F (587/2023 ; 22313/2024) [2025] ZAWCHC 310 (19 June 2025)

[2025] ZAWCHC 310**COURT**

Western Cape High Court, Cape Town

BEFORE

Mangcu-Lockwood

CASE / FILE NUMBER

587/2023 ; 22313/2024

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Policy**IN****THE HIGH COURT OF SOUTH AFRICA****EASTERN****CIRCUIT LOCAL DIVISION, THEMBALETHU, GEORGE****Case Number: 587/2023****&****Case number: 22313/2024****In**

the matters between:

R[...]

H[...] K[...]

Applicant/Respondent

and

D[...]

L[...] F[...]

Respondent/Applicant

JUDGMENT

ELECTRONICALLY DELIVERED ON 19 JUNE 2025

MANGCU-LOCKWOOD, J

A.

INTRODUCTION

[1] There are four interlocutory applications between the parties which were set down[1] for hearing simultaneously, namely contempt proceedings, an application in terms of Uniform Rule 43 (6), Rule 30 and Rule 30A applications.

All four applications arise from prolonged, acrimonious divorce proceedings, followed by a Rule 43 court order by Sher J on 19 June 2023, and a Rule 43(6) order granted by Gamble J on 29 April 2024.

[2] It was after the granting of the Rule 43(6) order of Gamble J that the interlocutory applications ensued. The terms of that order are detailed, covering 7 pages plus an annexure 'A'. In part, the court order made provision for the maintenance and parental responsibilities in respect of the parties' two minor children[2], and for maintenance in respect of Ms K[...][3]. The parties were agreed before me that any matters involving the minor children should be deferred for later determination, since a court-ordered Family Advocate report is yet to come to hand[4]. It also needs to be stated that, characteristic of acrimonious litigation of this nature, there are many allegations made by both

parties regarding a variety of issues, which are not traversed in this judgment.

[3] The pertinent paragraphs of the Rule 43(6) order which relate to these proceedings are set out as follows:

"1. [Mr F[...]] shall make payment to [Ms K[...]] in an amount equal to 60% (sixty percent) of the net value of the estate as at date of this order, as declared by [Mr F[...]], in an amount of R3 025 113. 60, without set-off or deduction, as follows:

1.1 An amount of R2 000 000.00 shall be paid [by Mr F[...]] within 7 court days [from] date of this order; and

1.2 The remaining R1 025 113.60 within 12 months from date of this order.

2. [Ms K[...]] may at her own cost, appoint a forensic expert should she deem it necessary, to further investigate the value of the estate, and should it be proven that [Mr F[...]] has understated the value of the estate by more than 15%, which value is at time of this order, [Mr F[...]] shall reimburse [Ms K[...]] for her costs of the forensic expert and pay to [Ms K[...]] her 50% of the shortfall she would have been entitled to, within 30 days from having received such report from the forensic expert.

2.1 [Ms K[...]] shall [appoint] the forensic expert within 60 days of this court order.

2.2 Should [Mr F[...]] dispute such report, [Mr F[...]] is afforded an additional 30 days to lodge a dispute and take the appropriate legal step he deems fit, failing which the report and findings shall be enforceable.

2.3 The powers of the forensic expert, are attached hereto as “A”, which annexure is duly incorporated into this order.”

- [4] As envisaged at paragraph 2.3 of the order, annexure “A” was indeed attached to the order and set out the powers and duties of the forensic expert to be appointed. It is common ground that the order was taken pursuant to an open tender made by Mr F[...] in terms of Uniform Rule 34(1), a copy of which appears in the record of the contempt application. It is also common ground that, pursuant to the court order, Ms K[...] appointed a forensic investigator, Mr Steve Harcourt-Cooke.
- [5] On 6 and 8 May 2024 Mr F[...] made two-part payments totalling R730 000, thus leaving an outstanding amount of R 1 270 000. When Ms K[...] demanded payment of the outstanding amount, Mr F[...] requested her signature of documentation to release funds which were kept in two foreign policies held in both parties’ names, named Quilter and Utmost, intending to use those funds to pay the outstanding amount in terms of clause 1.1 of the court order.
- [6] Ms K[...] refused to grant consent for the surrender of the policies, asserting that the payment was not meant to be final payment in respect of the division of assets in the divorce but a payment pendente lite. She also referred to assurances made by Mr F[...] leading up to the granting of the order by Gamble J, to the effect that he could afford to pay the amounts recorded in paragraph 1.1 of the court order. She referred to several other assets which could be liquidated by Mr F[...] in order to effect the outstanding payment, including an account referred to as Etoro and another named Revolut.
- [7] The Etoro account in particular, was highlighted by the forensic investigator in an e-mail dated 20 August 2024, in which it was stated that the Etoro help centre had provided information which indicated how easy it would be to access the funds contained in that account, which at that point had a cash balance of R946 000. The forensic investigator’s email was reinforced by correspondence from Ms K[...]’s attorneys to Mr F[...]’ attorneys dated 11 October 2024, which, in essence set out reasons for why they thought it preferable to surrender the Etoro account compared to the Utmost and Quilter policies. According to

Ms K[...], the letters sent by her attorneys did not elicit a response from Mr F[...] regarding why the Etoro funds could not be utilised, or any other funds accessed by Mr F[...], and she was compelled to launch the contempt proceedings.

- [8] By 24 October 2024, Mr F[...] had still not paid the outstanding amount in compliance with the court order, and Ms K[...] launched the contempt application, which was initially set down for 15 November 2024 on the unopposed roll. On 11 November 2024 Mr F[...] filed a notice of intention to oppose, as well as a notice of withdrawal of his attorneys of record, and as a result of becoming

opposed, the matter was removed from the unopposed roll, and was postponed.

- [9] It appears that both parties became unrepresented between December 2024 and January 2025. According to the documents in the contempt of court file the matter was set down for 9 December 2024, and on that day, Erasmus J struck the contempt application from the roll, and the court order to that effect is dated 12 December 2024, although no decision is recorded for striking the matter from the roll. Regardless, and contrary to the suggestion of Mr F[...] that he was found not in wilful contempt, the fact that the matter was struck off the roll and was not dismissed means no decision was made regarding the merits of the contempt. That is the reason the contempt matter was placed before this Court by court order of 10 March 2025.

- [10] On about 3 February 2025 Mr F[...] launched a fresh application in terms of Rule 43(6) seeking variation of the Rule 43(6) order of 29 April 2024,[5] and setting the matter down for 7 March 2025. The relief sought in the fresh Rule 43(6) is wide-ranging and includes relief relating to the children, which as I have already indicated, will not be part of this judgment. Mr F[...] seeks variation of the interim maintenance order on the basis that material changes in circumstances have arisen since the court order was made, including financial circumstances.

- [11] In response, Ms K[...] filed notices in terms of Rules 30 and 30A, in which she objected to Mr F[...]’ fresh Rule 43(6) application as an irregular step. She did not file an opposing affidavit to the fresh application in terms of Rule 43(6). In essence, she argues that the fresh Rule 43(6) application amounts to an appeal or rehearing of what has already been adjudicated in the order of 29 April 2024, which she says is impermissible. She points out that he has yet to comply with the court order of 29 April 2024, which conduct compelled her to launch the contempt proceedings. Then, without purging his non-compliance, Mr F[...] has launched the Rule 43(6), which she says amounts to an abuse of court processes.

- [12] In explanation of her failure to file an opposing affidavit to the fresh Rule 43(6) application, she states she will be seriously prejudiced if she is required to file an opposing affidavit to an unduly prolix application, since she will have to fund litigation that she cannot afford. The Rule 30 and 30A Notice is opposed by Mr K[...], who filed an opposing affidavit as well as a set of 17-paged heads of argument, complaining that the application is itself irregular and amounts to a delaying tactic of the fresh Rule 43(6) application and an abuse of process

because Ms K[...] failed to deliver an opposing affidavit.

[13] When the matters came before Goliath DJP on 10 March 2025, she issued a directive for the parties to each file a supplementary affidavit of not more than 25 pages, summarising the current status of the matter, inter alia: compliance with the order of Gamble J dated 29 April 2024; the current status of the Utmost and Quilter accounts; and the status of all outstanding documentation requested by Ms K[...] for purposes of a forensic investigation.

[14] One of the main pegs on which the fresh Rule 43(6) hangs is an allegation that Ms K[...] had failed to cooperate by signing the necessary documents necessary to release funds from the parties' Utmost policy. The issue has taken up a lot of volume in the papers. According to Mr F[...], on 7 May 2024 he gave two options to Ms K[...], the first being to take full possession of the funds in those accounts, which would enable her to access the funds within 7 days. The second option was for Ms K[...] to authorise transfer of the funds into his name, which he would in turn transfer to her once they were cleared in approximately four weeks. He states that Ms K[...] opted for the latter, while she falsely claimed that she was unable to open a bank account as a

foreign national, which he disputes because he had presented her with clear evidence that foreign nationals were able to open bank accounts in South Africa, but she refused or avoided signing the Utmost documentation and to complete what he refers to as the 'Know your Customer' legal process, for the release of such funds.

[15] In an effort to procure the signing of the Utmost documents by Ms K[...], the matter was placed on the case management roll before Thulare J, and on 13 June 2024 he issued directives for Ms K[...] to sign a deed of assignment and surrender form for the Utmost policy by close of business on the 17 June 2024, and to sign any other outstanding documents required for such release within 24 hours. Mr F[...] states that Ms K[...] failed to comply with that directive, and that by the date of deposing to his affidavit of 31 January 2025, the funds had not been released due to her non-compliance.

[16] For her part, Ms K[...] explains that, at some point, she could not sign the documents because she did not have a proof of address, an issue directly arising from his failure to pay the monies due in terms of the court order, as well as her immigration status. It is however, common cause that she did comply with the order of Thulare J by signing the relevant documents, although it is not clear when. However, as at the date of the hearing, she had not received the funds, and in fact she claimed that he stole them.

[17] In his supplementary affidavit Mr F[...] stated that the surrender of the Utmost policy funds, which stood at approximately R757 000, was in progress, and that the funds were due to be released prior to the court hearing of 4 June 2025 and would be transferred to Ms K[...] immediately. However, he stated that the second policy (2[...]), presumably under Utmost, remained inaccessible due to Ms K[...]’s failure to cooperate.

[18] Mr F[...] states that the Etoro funds would have not been sufficient to settle the outstanding amount in full, which means the Utmost funds would have needed to be released. Instead, according to him, it is Ms K[...] who unreasonably refused to sign the necessary documents for release of the Utmost funds. If he had transferred the Etoro funds to her while she continued to withhold her signature on the Utmost documentation he would have been left with no access to any financial resources.

[19] It appears that an auditor was appointed on 16 July 2024. According to Mr F[...] this was well beyond the 60-day deadline set in the court order although he accepted it. He claims that, although Ms K[...] had sufficient financial means to cover the costs of the audit at the time, she chose to allocate those funds elsewhere which resulted in significant delays in finalising the audit process. He also complains that despite furnishing hundreds of pages of financial documents to the financial auditor, and requests

for an update from the auditor, no update has been received.

[20] In the Rule 43(6) application, Mr F[...] also wishes for the Court to take judicial notice of the fact that Ms K[...] is not in dire financial need of the funds ordered by the court in April 2024, as allegedly evidenced by her deliberate delay in signing the necessary documentation for the release of the Utmost funds, and her alleged continued maintenance of an elevated and extravagant lifestyle, all of which are inconsistent with her claims of financial hardship.

[21] When the fresh Rule 43(6) application was brought, Ms K[...] and the minor children resided in her father's home. On that basis, Mr F[...] claimed that her demand for monthly maintenance which includes R25,000 for accommodation was unreasonable and unsustainable. As a result, he sought an order that his contribution towards her accommodation should be reduced to R15,000 per month, and that the amount be reviewed within six months. However, in the later supplementary affidavit, he acknowledges that Ms K[...] recently

entered into a tenancy agreement in her own name, and claims that this demonstrates her ability to secure accommodation without his involvement. He also claims that there is ample proof that Ms K[...] has income, including an existing maintenance order, bank statements and the fact that her father has acted as surety.

[22] Mr F[...] states that clause 11.6 of the court order of April 2024, which requires him to co-sign Ms K[...]’s lease, presents a contradiction because it simultaneously absolves him of any financial liability in that regard. He therefore seeks an order that the requirement be struck from the court order.

[23] He seeks an order that the financial audit be stayed in light of the fact that Ms K[...] has not fully disclosed her funds, and in light of the fact that she has failed to utilise funds paid to her for the intended purpose. He also seeks an order that the costs of this application as well as the contempt application be paid by Ms K[...] on a party-party scale given her vexatious litigation and obstructive conduct.

- [24] In the supplementary affidavit, Mr F[...] points to the imminent sale of his UK property, based on a conditional offer of purchase, upon which he is due to receive approximately R7.8 million. After payment of the outstanding bond amount and conveyancing costs, he estimates a profit of approximately R1.73 million, and, provided Ms K[...] signs the Utmost documents, she is due to receive R1.148, 452 from the sale.
- [25] He has also annexed updated financial documents to show his financial strain. He claims that he offered Ms K[...] an opportunity to generate an income on a commission-only basis through his business, which she declined. He also states that if she pursues a forensic audit beyond this point she does so with full knowledge that no further liquid or disposable assets exist.
- [26] In essence, Ms K[...] disputes every averment made in Rule 43(6) application as well Mr F[...]’ supplementary affidavit. She emphasises that the court order of April 2024 was granted after Mr F[...] assured the court that he could afford to make the payments reflected therein. She highlights that the terms of the court order are interlinked and constitute an interconnected framework, and that his failure to make payments in compliance with clauses 1.1 and 1.2, has had a direct bearing on her, citing numerous examples. She also cites his non-compliance with the order of Sher J, resulting in some outstanding arrears. She also states that he has refused to co-sign her lease agreements to secure housing for her and the children while also pursuing their eviction.
- [27] She states that, although he spent eight months claiming that the Etoro funds were not accessible to him, he simultaneously dissipated the funds for self-gain.

B. RELEVANT LAW

- [28] Contempt of court, in the present context, has been defined as “the deliberate, intentional (i.e wilful), disobedience of an order granted by a court of competent jurisdiction”.^[6]
- [29] Once it is shown that the order was granted (and served on or otherwise came to the notice of the respondent) and that the respondent had disobeyed or neglected to comply with it, both wilfulness and mala fides will be inferred.^[7] Thus, once the applicant has proved the order, service or notice, and non-compliance, an evidentiary burden rests upon the respondent in relation to wilfulness and male fides, that is, to advance evidence that establishes a reasonable doubt as to whether non-compliance with the order was wilful and male fide.^[8]
- [30] Even though the defaulting party may be wilful, such party may still escape liability if they can show that they were bona fide in their disobedience. Where the defaulting party has genuinely tried to carry out the order and has failed through no fault of his or her own, or has been unable but not unwilling (for example, by reason of poverty), to carry out the order, proceedings for committal will fail.^[9]

[31] As for Uniform of Rule 43, its purpose is to provide a speedy and inexpensive remedy. It allows for interim arrangements to be imposed

on the parties in matrimonial disputes pendente lite, until the divorce court can make a properly informed decision after hearing viva voce evidence. An order made in terms of Rule 43 is not appealable in terms of section 16(3) of the Superior Courts Act 10 of 2013.[10] As a result, Uniform Rule 43(6) provides that the Court may, “on the same procedure, vary its decision in the event of a material change occurring in the circumstances of either party or a child, or the contribution towards costs proving inadequate.”

[32] Rule 43(6) is strictly interpreted.[11] It requires that there be a material change to a party’s circumstances subsequent to the grant of a Rule 43 order. It is not permissible to seek a rehearing or a review of an existing order under the guise of a Rule 43(6) application, or effectively to appeal the existing order.

[33] In *Micklem v Micklem* it was held as follows:

“Rule 43(6) does not provide for a rehearing of a former application, based on new evidence. The court is not to be faced with virtually a review

of a previous decision, based on the existing facts, but now having been given time to deal with the matter in more detail, having being able to utilise more information, another slant being given to these very same facts, or one or two additional facts might be discovered which puts a different complexion on matters. After all, this is merely to assist parties in resolving their differences and if one makes of Rule 43 procedure, a procedure whereby acrimony is engendered and further issues are brought forward, which only complicates the divorce instead of simplifying it, Rule 43 misses its point. In my view Rule 43(6) should be strictly interpreted to deal with matters which it says has to be dealt with, that is, a, material change taking place in the circumstances of either party or child. That relates to a change subsequent to the hearing of the original Rule 43 application.”

[34] In an application for a reduction in the interim maintenance payable based on a decline in the financial situation of an applicant under the subrule, a full and frank disclosure of all of the elements which make up the broad overview of such applicant’s financial situation should be made.[12] The applicant bears the onus of establishing on a balance of probabilities that a material change has occurred. To succeed, an applicant must demonstrate not only that a change or even a significant change in circumstances has occurred, but must place

sufficient facts before the Court to enable it to determine the materiality of that change in the context of the applicant’s

broader financial circumstances.[13]

[35] There is a duty on applicants in Rule 43 applications seeking equitable redress to act with the utmost good faith (*uberrime fidei*) and to disclose fully all material information regarding their financial affairs, and any false disclosure or material non-disclosure would mean that he or she is not before the court with “clean hands” and on that ground alone the court will be justified in refusing relief.[14]

C. DISCUSSION

[36] It is common cause that Mr F[...] has not complied with clauses 1.1 and 1.2 in terms of which he was to pay in amount of R2 million, followed 12 months later by an additional amount of R1 025 113.60. By 10 May 2024 he had only paid an amount of R729 000, and that remains the case to date.

[37] His retort regarding his failure to make the requisite payments is that it is due to Ms K[...]’s failure to cooperate by signing the necessary Utmost documents. One problem with this approach is that the court order was not made subject to, or conditional upon, to any other occurrence of event or conduct by either party. Nevertheless, after Thulare J ordered Ms K[...] to sign the documents, she did sign, although there was more wrangling between the parties.

[38] By the date of the hearing, the payment had not been received by Ms K[...]. A few days before the hearing Mr F[...] states that he attempted to make payment of some hundreds of thousands to Ms K[...], which she refused to accept. It was argued before me that this was an indication that she is not in dire need of the funds as she claims.

[39] However, the correspondence annexed to the papers and highlighted by Ms K[...] tells a different story. She explains that she did indeed complete all the forms required for the release of the Utmost funds. However, she informed Mr F[...] that she could not accept such a large international transfer due to banking regulations and accordingly requested him to first transfer the money

into his South African account and thereafter transfer it to her South African account.

Alternatively, she suggested that he deposit

it into her attorney’s trust account, for transfer into her South African account. He ignored her pleas, and attempted to

transfer the money internationally to her. The money was blocked and returned to him. Contrary to the claims of Mr F[...], this is not an indication that Ms K[...] did not want or need the funds. If anything, it is an indication that Mr F[...] does indeed have money to pay in terms of the court order of April 2024, contrary to his claims that he is unable to afford the payments.

[40] The rule 34(1) tender made by Mr F[...] and which formed the basis for the court order of 29 April 2024 did not contain any condition for payment, and instead provided as follows:

“1.1.1 the table annexed herewith as Annexure “WPT1”, which table sets out the assets held in the Defendant’s estate, which assets are capable of division in terms of section 24(1)(a) and/or section 24(1)(b) of the [Matrimonial Causes Act 1973 of the United Kingdom], and in respect of which assets the estimated current value is set out in “WPT1”;

1.1.2 the Immigration Act 13 of 2002;

1.1.3 the fact that the estimated value of the assets listed in WPT1 is subject to fluctuations in interest rate, value of cryptocurrency and exchange rate.

1.1.4 Defendant shall make payment to Plaintiff in an amount equal to 60% (sixty percent) of the net value of the estate in an amount of R3 025 113.60 as follows...”

[41] In annexure WPT1 of the tender, Mr F[...] set out what he estimated to be each parties’ value of the estate, and the 60% that he offered to pay to Ms K[...] was her set out as her portion which was calculated apart from his 40%. It was on the basis of the amounts contained in that annexure that the court permitted Ms K[...] to appoint a forensic investigator, to interrogate those claimed amounts.

[42] But even in that regard, the evidence shows that there has been non-compliance. In 2024 the appointed forensic investigator requested specified documents which remain outstanding. In that regard, Ms K[...]’s erstwhile attorney issued rule 35 notices to compel discovery, which have yet to be complied with. Although Mr F[...] claims to have provided over a thousand documents,

they do not include the key documents specifically requested.

[43] Yet in these proceedings, Mr F[...] has provided ‘updated’ financial statements which themselves must be verified – the very thing the court sought to facilitate over a year ago through the appointment of the forensic investigator. Given the lapse of time, the forensic investigator’s work will be affected and duplicated, if not nullified in some respects. There are many unsubstantiated financial claims in the fresh Rule 43(6) application. They include the new claims of the sale of the UK property, which too remains unverified. All while Mr F[...] fails to comply with the court order of April 2024. The considerations of the proper and effective administration of justice militate against the relief and approach sought by Mr F[...].

[44] It is understandable that, after numerous demands, Ms K[...] launched the contempt application when she did. Instead of delivering an answering affidavit to that application to explain the circumstances of his non-compliance, Mr F[...] became legally unrepresented, and yet managed to launch, not only a fresh and voluminous Rule 43(6) application, but also vociferous opposition to the Rule 30 and 30A Notices, which were accompanied by heads of argument. All of this is a world apart from the relatively inexpensive and quick remedy that is meant to be provided by Rule 43 proceedings.

[45] One example of Mr F[...]’ dilatory tactics relates to his version regarding the Etoro account. Whilst he failed to engage Ms K[...] when she and her legal representatives and the auditor suggested use of those funds in order to meet the shortfall in making payments in terms of the court order, it is clear from his fresh Rule 43(6) and supplementary affidavit that, at the time that these discussions were taking place through legal representatives on both sides, he was dissipating the funds in question.

[46] In these proceedings, his explanations regarding the Etoro account are less than satisfactory and are rather opaque. He states that the Etoro funds have been partially depleted as they were used to sustain Ms K[...] and himself, and were the only funding he has access to for financial survival and to maintain his monthly obligations, which include supporting the minor children. In this regard he explains as follows: “For a period of three months, I was unable to draw a full salary, forcing me to rely on the Etoro funds to survive, meet my monthly financial obligations, and settle various outstanding debts.” The monthly obligations specifically mentioned in his supplementary affidavit in this regard are school fees, which he states have

increased by R5000 per month, as well as personal debt, including mortgage arrears, service charge arrears and loans, which he states are now in excess of R300,000.

[47] These allegations are emphasised in his supplementary affidavit, where it is stated that Mr F[...]’ business suffered a “dramatic and ongoing commercial downturn”, and was burdened with liabilities exceeding R1,000,000, which includes creditor arrears and operational debts. There is no detail provided regarding when the alleged hardship lasting three months was incurred, or of the exact financial obligations and outstanding debts he refers to in these averments. No specific dates, or incidents or details are provided regarding the alleged dramatic downturn of the business, or why it is allegedly ongoing, or why this includes operational debts if it is sudden and dramatic as claimed. And importantly, none of this was stated to Ms K[...] or her legal representatives at the time that they suggested use of those funds, evincing mala fides. As Ms K[...] states, his reasons for refusing access to the Etoro funds at the time were obfuscatory, relating to certain difficulties

in accessing them.

[48] It is clear that, by launching the fresh Rule 43(6) Mr F[...] seeks a rehearing or reconsideration of the Rule 43(6) order granted on 29 April 2024. That much is clear from the relief he seeks which includes an order directing that the funds mentioned in paragraph 1 of the court order be reserved for equitable division upon the finalisation of the divorce proceedings, rather than being immediately released to Ms K[...]. And that the reserved funds be equitably divided upon the finalisation of the divorce action, ensuring a fair and just allocation in accordance with the overarching principles of matrimonial law. He also claims for the first time that Ms K[...] has received over 75% of the entire estate through interim measures, which is not in line with the UK matrimonial law under which the parties are married. Further, that the Rule 34 tender which he made, “was made under false

pretence since it has come to light that [miss K[...]] has concealed funds”.

[49] The various allegations made in the fresh Rule 43(6) application must be viewed in the light of the fact that Mr F[...] has failed to purge his non-compliance with the court order of 29 April 2024. It is not difficult to see that that the large amounts of money ordered in terms of clauses 1.1 ad 1.2 of the court order had a cascading effect on the rest of the court order. Needless to say, the court would not have granted that order, if it was not satisfied that the payments were due to Ms K[...] as an interim measure.

[50] In that context, Ms K[...]’s explanation for why, for example, she was compelled to utilise more of the medical funding available for her and the children, is understandable. She has been compelled to live on a shortfall created by Mr F[...]’ failure to comply with the court order. Amongst other direct consequences of his failure to pay in terms of the court order, Ms K[...] states that she has been unable to pay rental costs, clear her arrears, pay for the minor children's medical expenses as well as her own, pay for debts accumulated since the first Rule 43 application in 2023, secure legal representation, pay for large family vet bills, pay for the shortfall in monthly maintenance, pay for the children's educational tools, cash contribution and cell phone allowance. The financial shortages have also affected her immigration status.

[51] Yet in his fresh Rule 43(6) application, Mr F[...] claims that Ms K[...] is not in dire financial need, and points to some of the circumstances created by his non-compliance to create a narrative that Ms K[...] is living beyond her means, contrary to the finding of the court in the court order of April

2024. He seeks, for example, an order removing Ms K[...] from his medical aid, and that she be required to obtain and maintain her own medical aid at her cost.

[52] The fundamental problem facing Mr F[...] in his fresh Rule 43(6) is that he has approached this Court with unclean hands, and given that the evidence shows, not only his failure to comply, but also mala fides and obfuscation on his part, the legal authorities indicate that the relief he seeks should be refused.[15] He cannot be rewarded for his failure to comply with the court order by a new order, which exonerates him and, amongst other things, saves the money he was supposed to pay in terms of clauses 1.1 and 1.2, for his benefit in the divorce.

[53] Another clear example that the fresh Rule 43(6) is, in effect an appeal, is the request for an order removing the need for Mr F[...] to co-sign Ms K[...]’s lease agreements

on the basis that the court order is contradictory. He also states that Ms K[...]’s father should act has her co-signatory. In this respect Mr F[...] seems to lose sight of the fact that Ms K[...] lives with his children. Why should her father shoulder the responsibility of providing security for her and the children’s accommodation? In any event, it is not disputed that, for approximately a year before the court order was granted, Ms K[...], who is not a South African citizen had struggled to obtain

accommodation without that a co-signature, and was subjected to credit cheques and agents and was accordingly compelled to obtain the assistance of third parties. No doubt, the co-signing order was granted with that background, in order to ensure secure housing

accommodation for Ms K[...] and the children.

[54] For all these reasons, there is abundant evidence, based on a balance of probabilities, that Mr F[...]’ failure to comply with the court order was mala fide and wilful, thus constituting contempt. There is furthermore no basis laid for granting an order in terms of his fresh Rule 43(6) application, and I am in agreement with Ms K[...] that the application constitutes an appeal of the court order of 29 April 2024, which is impermissible. Accordingly, her notices in terms of Rules 30 and 30A must be upheld. There is furthermore no reason why costs should not follow the result.

[55] In all the circumstances, the following order is made:

1. Mr F[...] is held in contempt of the court order of 29 April 2024, and is ordered to comply with it by:
 - a. paying the outstanding payments in terms of clauses 1.1 and 1.2 thereof by end of 30 June 2025.
 - b. providing all the outstanding documents requested by the forensic investigator, by end of 30 June 2025.
2. Mr F[...] is to pay the costs of the contempt application, where so employed, on an attorney client scale.
3. Mr F[...]’ Rule 43(6) application is dismissed, and Mr F[...] is ordered to pay his own costs in relation thereto; and
4. Ms K[...]’s Rule 30 and 30A notices are upheld, and Mr F[...] is ordered to pay his own costs in relation thereto.

N. MANGCU-LOCKWOOD

Judge of the High Court

APPEARANCES

For the applicant : Ms. R. H. K[...] (in person)

For the respondent : Adv J.J. Gildenhuys

Instructed by

: A. Kassen

Hanekom Attorneys

[1] By order of Goliath J dated 10 March 2025.

- [2] At paragraphs 3 – 10 and 12 - 16.
- [3] At paragraphs 11 -11.6.
- [4] In terms of the Court Order of 10 March 2025.
- [5] Although the affidavit for this application is deposed on 31 January 2025, the court stamp on the affidavit is 28 February 2025 whilst the notice of motion is affixed with a stamp dated 4 February 2025.
- [6] Consolidated Fish Distributors (Pty) Ltd v Zive 1968
(2) SA 517 (C) at 522B–D.
- [7] Townsend-Turner v Morrow 2004
(2) SA 32 (C) at 49C–D.
- [8] Fakie N.O. v CCII Systems (Pty) Ltd and another [2006] ZASCA 52; 2006
(4) SA 326 (SCA) at paras [42]-[43].
- [9] Matjhabeng Local Municipality v Eskom Holdings Ltd and others; Mkhonto and others v Compensation Solutions (Pty) Ltd 2018
(1) SA 1 (CC) at paras [85]-[88]; and see the discussion in Erasmus Superior Court Practice Vol. 1 (revision service 18, 2022) at A2-173.
- [10] See S v S and another 2019
(6) SA 1 (CC).
- [11] See Greenspan v Greenspan 2001
(4) SA 330 (C) at 335E–F.
- [12] Du Preez v Du Preez 2009
(6) SA 28, at page 32 B-J-33A.
- [13] See CLJ v CLG [2023] ZAGPJHC 386 (26 April 2023) at para [22].
- [14] Du Preez v Du Preez.
- [15] Mgoqi v City of Cape Town and Another; City of Cape Town v Mgoqi and Another 2006 (4) SA 355 (C) at para 140.

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